IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8274 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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AHMEDABAD MUNICIPAL TRANSPORT

Versus

AHMEDABAD GENERAL MAZDOOR

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Appearance:

1. Special Civil Application No. 8274 of 1992

MR MG NAGARKAR for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 08/10/2004

ORAL JUDGEMENT

In this petition, the Ahmedabad Municipal Transport Service ( "AMTS" for short) has challenged part of the award dated 27th May, 1991, passed by the

Arbitrator Shri G.S. Barot, in so far as the same deals with the promotional policy of the employees of the Workshop Department of AMTS.

2. To arbitrate on number of disputes between the petitioner and the employees of the petitioner employer, both sides agreed to refer the disputes to an Arbitrator and accordingly one Shri G.S. Barot came to be appointed as sole Arbitrator. Number of disputes came to be arbitrated upon and a decision was given by the Arbitrator by his award dated 22.5.1991. I am not concerned with all the disputes except one with respect to the promotion policy of the employees working in the Workshop Department. With respect to the said employees, it was noted by the Arbitrator that in the Department, promotions were given according to seniority, but subject to clearance of a trade test. The Arbitrator however, concluded that such a trade test is not necessary and found that the persons who become eligible for promotion would have by then sufficient experience in the working condition for number of years and that therefore, it would be no use to subject them to any kind of test and it was therefore, directed that in the said Department, all promotions should be granted subject to seniority without any trade test.

To hold that the trade test is not necessary, the learned Arbitrator observed that the trade test comprises of written examination and oral interview and such a procedure would lead to further litigation and disputes. He however, observed that there is some force in the contention of the management but found that there would be some deficiency in the system of trade test also, especially in case of oral interviews, and observed that but after all no system can be foolproof. He accordingly was of the opinion that system of giving promotion by way of seniority cum merit was a lesser evil. Accordingly, the arbitrator was pleased to direct that the practice of taking trade test would be done away with and the promotions be granted only on the basis of seniority.

I find that the learned Arbitrator had entered into the area which should be left exclusively for the employer to decide. It is by now well settled that all the promotional policy should be allowed to suit the choice of the employer and even the Court of law have very limited jurisdiction to question and examine such policy matters. Unless it is pointed out that the policy is wholly arbitrary and unreasonable, it would not be possible for the Courts to supersede such a policy and give direction to evolve or adopt an alternative policy.

The method of giving promotion by holding of trade test cannot be construed as arbitrary or unreasonable.

In the decision of the Hon'ble Supreme Court in Government of T.N & anr. Vs. S. Arumugham & ors. reported in (1998) 2 SCC 198, the apex Court was pleased to observe that allocation of posts among different officers for deputing Section Officers/Superintendents for training as Tehsildars, which would enable them to earn further promotion as Deputy Collectors, was a policy decision and Administrative Tribunal erred in giving directions for reframing the scheme in a particular manner.

Yet in another decision in the case of All India State Bank Officers' Federation & ors. Vs. Union of India and ors. reported in (1997) 9 SCC 151, the Hon'ble Supreme Court found that enhancing the requirement of minimum length of service from 2 years to 4 years by way of promotion policy cannot be termed as illegal.

In view of the above judicial pronouncements and considering the facts of the present case, I find that the Arbitrator has exceeded his jurisdiction and examined which promotion policy would be better, which exercise he could not have undertaken. If the employer has chosen a particular promotion policy, unless it is found to be wholly arbitrary or unreasonable, it cannot be interfered with.

In the result, I find that the directions of the Arbitrator in its impugned award to give promotion in the Workshop Department on the basis of seniority alone without conducting trade test, was illegal and the same is therefore, quashed and set aside. In the result, the petition succeeds. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas